IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.3580 OF 2006
IN
SUIT NO. 6789 OF 1999

SMT. MAY G. RANI KOYA ... PLAINTIFF.
VS.
SHRI JAYRAM S. SHETTY ... DEFENDANT.

MS. GEETA SHASTRI I/B. S.P.SRIVASTAVA FOR THE PLAINTIFF.
MR. M.D.ANGAL I/B. PRAKASH MAHADIK FOR THE DEFENDANT.

Coram : S.K.Shah, J.
Date : March 6, 2007.

P.C.:-

1. Heard the learned Counsel on both sides.

2. This is defendants motion seeking rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure.

3. It is the contention of the applicant- Respondent in this motion that the suit premises falls within the area declared as Slums area by the Government under the notification issued under the Slum Area (Improvement , Clearance and Re-development) Act, 1971 (for Short "Slums Act" and for filing the Suit, permission from the Competent Authority was necessary.

4. It is well settled that for considering the rejection of the plaint under these provisions of the Code of Civil Procedure, it is necessary to consider only the averments made in the plaint and not any extraneous documents/ material.

5. It is vehemently submitted on behalf of the applicant/ defendant that in paragraph 27 of the plaint, it has been averred that the Photo-pass and the rent receipts have been issued in favour of the Plaintiff by the Bombay Municipal Corporation. It is submitted that these are rent receipts and the photo-pass which by themselves would indicate that the suit property situate in Slum area and is covered by the provisions of the aforesaid Slums Act and, therefore, it would attract the provisions of Section 22 of the Slums Act as regards the permission of the Competent Authority for institution of the Suit and that the same is barred for want of the the permission from the Competent Authority and that there is no such permission obtained from the Competent Authority to institute this Suit.

6. As against this it has been submitted on behalf of the Respondent- Plaintiff that only the averments made in the plaint are required to be considered to find out whether the provisions of Section 22 of the said Act would be attracted and whether the Suit is barred under Order VII Rule 11 of the CPC.

7. The learned Counsel for the Plaintiff submits that there is no such averments in the plaint that the suit property is situated within slum area declared by the Government under any notification. She also further submits that mere showing Photo-pass and rent receipts woud not be sufficient to attract the provisions under Section 22 of the Slums Act in order to bar the Suit. She further submits that in first paragraph of the plaint itself, it has been mentioned that the Plaintiff is a tenant of BMC. It is also pointed out that in para 27 of the plaint there is averment that the plaintiff is getting rent receipts from the BMC, in order to substantiate her contention that the plaintiff is the tenant, therefore, the suit cannot be said to be barred for want of permission from the Competent Authority.

8. Mere showing the photo-pass would not be sufficient, at this stage to grant the relief sought in this motion, as the Plaintiff is claiming in the Suit that he is tenant of BMC. This being the position, the Suit cannot be said to be governed by the provisions of the aforesaid Slums Act.

9. The learned Counsel for the defendant, however, pointed out certain photo-pass issued in the name of the defendant, in order to substantiate his submissions that the provisions of Section 22 of the Slums Act would be attracted. However, that aspect cannot be considered at this stage. Provisions under Order VII Rule 11 can be considered on the basis of averments made in the plaint and not on the basis of any extraneous material. As regards the photo-pass produced by the applicant -defendant, it would be an extraneous material and, therefore, cannot be considered at this stage. Similarly, the learned counsel for the applicant -defendant produced certain list of the names of the persons, in order to substantiate that the suit properly falls in the slum area. However, this also cannot be given consideration as it is extraneous material. Thus, it is the averments made in the plaint that the plaintiff claims to be the tenant of the BMC and also claims that the BMC issues rent receipts are to be considered. There is also no averment in the plaint that the suit property is forming a part of the slum area, declared by the Government under any Notification.

10. Under the circumstances, the provisions under Section 22 cannot be said to have been attracted so as to bar the suit for want of permission from the Competent Authority to file the Suit. Consequently, the motion is dismissed.

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[S.K.Shah , J.]